

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
FOR THE
BOARD OF EDUCATION
NUVIEW UNION SCHOOL DISTRICT

In the Matter of the Reduction in Force
Proceedings Concerning:

17 Certificated Employees,

Respondents.

OAH No. 2012030945

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Nuevo, California on April 26, 2012.

Todd M. Robbins, Esq. of Atkinson, Andelson, Loya, Ruud & Romo represented the Nuvview Unified School District (the District).

All of the respondents who were present for the hearing were represented by Kent Morizawa, Esq. of Reich, Adell & Cvitan, a Professional Law Corporation.

The matter was submitted on April 26, 2012.

FACTUAL FINDINGS

1. David L. Linzey, Superintendent of the District, made and filed the Accusation dated March 21, 2012, while acting in his official capacity as the Superintendent.

2. Respondents are certificated District employees.

3. On March 8, 2012, the Board of Education (Board) adopted Amended Resolution No. 020912A (the Resolution), determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2012-2013 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
Elementary K-5 Teaching Services	10.6
Elementary Physical Education Teaching Services	1.0
High School Science Teaching Services	1.0
Middle School Art Teaching Services	1.0
Director of Child Development Programs	1.0
Coordinator of Child Development Programs	1.0
Teacher on Special Assignment-Language Coach	1.0
Teacher on Special Assignment-Literacy Coach	.7
<u>Total FTE's</u>	<u>17.3</u>

The services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

4. The Board's decision to reduce or discontinue the services listed in Finding 3, above, is neither arbitrary nor capricious; rather, it is due to substantial decreases in the operating budget, and is, therefore, a proper exercise of the Board's discretion. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

5. The Superintendent and District considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

6. On March 12, 2012, the Superintendent timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the District's intent not to reemploy them for the upcoming school year. Accordingly, respondents

received written notice, on or before March 15, 2012, notifying them that the Board had recommended they not be re-employed in the upcoming, 2012-2013, school year.

7. On March 21, 2012, respondents were served with a copy of the Accusation, Notice of Accusation, a blank Notice of Defense, a Request for Hearing, and other related materials.

8. The following certificated employees were timely served with layoff notices or a precautionary layoff notice:

16 Layoff Notices: Casey, Penny S.; Coursol, Megan M.; Everett, Elizabeth A.; French, Jennifer A.; Kamper, Elizabeth A.; Leung, Alisha L.; Martinez, Blanca E.; Murray, Juliana L.; Newton, Holly A.; Niffen, Marla B.; Otero, Sandra L.; Reed, Kristy L.; Schaeffer, Sarah M.; Schaeffer, Clifford M.; Tam, Annie; and Ward, Marty T.

1 Precautionary Notice: Moomey, Krista D.

9. The following 14 certificated employees (respondents) timely requested a hearing and filed notices of defense: Casey, Penny S.; Coursol, Megan M.; Everett, Elizabeth A.; French, Jennifer A.; Martinez, Blanca E.; Moomey, Krista D.; Murray, Juliana L.; Newton, Holly A.; Niffen, Marla B.; Reed, Kristy L.; Schaeffer, Sarah M.; Schaeffer, Clifford M.; Tam, Annie; and Ward, Marty T.

One certificated employee, Elizabeth Camper, failed to request a hearing; however, the District waived any jurisdictional deficiencies and agreed that she be allowed to participate as a respondent in the instant proceedings.

10. All respondents were properly noticed of the date, time and place of the instant hearing.

11. All prehearing jurisdictional requirements have been met.

12. Respondents have been selected for notice of layoff pursuant to their seniority date, which is based on the first day of paid service of each respondent in a probationary position. Respondents were ranked for layoff in the inverse order of their seniority dates.

13. Respondent Marla Niffen (Niffen) has a seniority date of August 21, 2007. Niffen was originally hired by the District to teach 7th grade English, a departmentalized English class. Niffen taught the departmentalized English class for the first four years of her employment with the district. Then, in 2010-2011, she was one of the certificated employees noticed of potential layoff in that year's reduction in services proceedings (RIF). Ultimately, as a result of the 2010-2011 RIF

proceedings, Niffen shifted into her current teaching position, teaching 6th grade Language Arts.

The current Resolution provides, in pertinent part, “That ‘competency’ as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: . . . (2) for bumping a holder of a Single Subject credential in a departmentalized course in grades 7-12, an equivalent Single Subject credential authorizing service in all grades 7-12 . . .”

Niffen believes that she is “competent” to bump two employees with less seniority who are currently teaching “7/8 Language Arts.” (Exh. 11) Niffen bases her assertion on the fact that this position is the exact position she taught for four years prior to being moved into her present position as a result of last year’s RIF proceedings.

The two employees who are currently teaching “7/8 Language Arts” both possess Single Subject credentials. Consequently, pursuant to the Board’s resolution, Niffen lacks the Single Subject bumping criterion necessary to bump either of the two Single Subject credentialed teachers and the District’s determination in that regard constituted a proper exercise of its discretion.¹

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

¹ In *Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299 the California Supreme Court stated:

. . . The question for the board’s determination was simple, whether [respondent], the senior teacher on layoff status, was ‘certificated and competent’ to render the required service.

Such determinations, it has been held, involve ‘discretionary decisions’ which are within the ‘special competence’ of the school districts [citation omitted]. As [respondent] concedes, it was within the power of the board to establish requirements for the vacant position. Such requirements could properly take into account both prior academic preparation . . . and prior experience

2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority’s discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the District does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

4. The services listed in Factual Finding 3 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

5. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District due to budgetary reasons.

6. Cause to reduce or discontinue services relates solely to the welfare of the District and its pupils within the meaning of Education Code section 44949.

7. Cause exists to give all named respondents, except for the respondent served with a “precautionary” notice, notice that their services are not needed for the ensuing, 2012-2013, school year.

ADVISORY DETERMINATION

The following advisory determination is made:

Prior to May 15, 2012, notice shall be given to all respondents, except for respondent Krista D. Moomey (she received a precautionary layoff notice), that their services will not be required for the ensuing school year due to the projected budget deficit and the resulting need to reduce and/or discontinue certain services.

The Accusation is dismissed as to respondent Krista D. Moomey and her
layoff notice is rescinded.

DATED: May1, 2012

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings